

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
MARK SMITH

NOV 1 2007

COMPLAINT  
IN A CIVIL ACTION

Plaintiff,

07 CIV 10420  
v. Action No.

-against-

PLAINTIFF DEMANDS  
TRIAL BY JURY

JOHN BARBUTO,

Defendant.

JUDGE CONNER

-----x  
Plaintiff, MARK SMITH ("SMITH") by his attorneys, Greenberg & Massarelli, LLP, as and for his Complaint in a Civil Action alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff SMITH is a citizen of the State of Florida within the meaning of 28 U.S.C. 1332
2. Defendant JOHN BARBUTO ("BARBUTO") is a citizen of the State of New York within the meaning of 28 U.S.C. 1332
3. This court has venue to hear this action pursuant to 28 USC 1331(a)

FIRST CLAIM

4. On June 22, 2006 on the Saw Mill River Parkway at or near its intersection with Interstate 87 in the Town of Greenburgh, Westchester County, New York a 2000 Daewoo motor vehicle ("Daewoo") (bearing license plate number AJK8748) owned and operated by defendant BARBUTO struck ("car

accident') a 2004 Audi Sedan ("Audi ") (with license plate number AYH2980) being operated by plaintiff SMITH.

5. The car accident by and between the Daewoo and Audi on June 22, 2006 was by reason of the negligence of the defendant BARBUTO in the ownership, operation, maintenance and control of the Daewoo.

6. The negligence of defendant BARBUTO in the ownership, operation, maintenance and control of the Daewoo consisted of *inter alia*, failing to yield the right-of-way, failing to avoid striking the Audi in the rear when the Audi was stopped, failing to keep a proper look out; operating at an unsafe speed; failing to operate the vehicle safely in view of the traffic conditions then and there prevailing, failing to leave proper distance between the Daewoo and the Audi while following the Audi on the highway, failing to give warning by appropriate use of horn; failing to keep a proper lookout; failing to maintain the automobile in good and safe condition; failing to make use of proper turn signals; ignoring the direction of traffic signals and signs; operating the vehicle unsafely in view of the prevailing weather conditions, violating applicable provisions of the New York State Motor Vehicle and Traffic Law; and in otherwise being reckless, negligent and careless under the circumstances then and there existing.

7. The negligence of the defendant BARBUTO in his ownership, operation and maintenance and control of the Daewoo was the proximate cause of serious painful disabling personal injuries with longstanding permanent consequences sustained by the plaintiff SMITH which injuries are "serious" within the meaning of New York State Insurance Law §5102(d) (applicable New

York State "no-fault" law) to wit: the plaintiff's injuries sustained are (1) a permanent loss of use of a body organ, member, function and system; (2) a permanent consequential limitation of use of a body organ or member of the plaintiff; (3) a significant limitation of use of the plaintiff's body, function and system; and (4) a medically determined injury or impairment of a non-permanent nature which has prevented and is preventing the plaintiff from performing substantially all of the material acts which constituted the plaintiff's usual and customary daily activities for not less than ninety days during the one hundred eighty days which immediately followed the accident of June 22, 2006.

8. By reason of the foregoing, the plaintiff SMITH has been damaged in a sum of Five (\$5,000,000) Million Dollars not including the costs and disbursements of this action.

WHEREFORE, Plaintiffs demand judgment as against the defendant on the First Claim in the sum of Five (\$5,000,000) Million Dollars, along with the costs and disbursements of this action.

Dated: Purchase, New York  
November 16, 2007

Yours, etc.

GREENBERG & MASSARELLI, LLP

By:   
William Greenberg (WG3838)  
Attorneys for Plaintiff  
MARK SMITH  
2929 Purchase Street  
Purchase, New York 10577  
(914) 694-1880